



## **FEDERAL MEDIATION AND CONCILIATION SERVICE**

### **5 CFR Chapter CIII**

#### **RIN 3209-AA65**

### **Supplemental Standards of Ethical Conduct for Employees of the Federal Mediation and Conciliation Service**

**AGENCY:** Federal Mediation and Conciliation Service.

**ACTION:** Final rule.

**SUMMARY:** The Federal Mediation and Conciliation Service (FMCS), with the concurrence of the Office of Government Ethics (OGE), is issuing this final rule for FMCS employees. This rule supplements the Standards of Ethical Conduct for Employees of the Executive Branch (OGE Standards) issued by OGE and is necessary because it addresses ethical issues unique to the FMCS. This rule sets forth prior approval requirements for certain outside employment and outside activities for all FMCS employees, other than special government employees.

**DATES:** This rule is effective **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

**FOR FURTHER INFORMATION CONTACT:** Anna Davis, Designated Agency Ethics Official (DAEO), General Counsel, Office of General Counsel, Federal Mediation and Conciliation Service, 250 E Street, SW, Washington, DC 20427; Office/Fax/Mobile 202-606-3737; [register@fmcs.gov](mailto:register@fmcs.gov).

#### **SUPPLEMENTARY INFORMATION:**

##### **Background**

In July 2023, the FMCS issued a proposed rule to establish the Supplemental Standards of Ethical Conduct for Employees of the Federal Mediation and Conciliation

Service (Supplemental Standards), which are to be codified in 5 CFR part 10300. 88 FR 45822 (July 18, 2023). The proposed rule provided a 30 day comment period, which ended on August 17, 2023. The FMCS did not receive any timely and responsive comments. The rationale for the proposed rule, which the FMCS is now adopting as final, is explained in the preamble at:

*<https://www.federalregister.gov/documents/2023/07/18/2023-15021/supplemental-standards-of-ethical-conduct-for-employees-of-the-federal-mediation-and-conciliation>.*

For those reasons, the FMCS is, with the concurrence of OGE, issuing the rule as final with no substantive changes.

## **I. Analysis of the Regulations**

In accordance with 5 CFR 2635.803, the FMCS has determined it is necessary for the purpose of administering its ethics program to require its employees, other than special government employees, to obtain approval before engaging in certain outside employment and outside activities. The FMCS's mission is to promote labor-management peace and cooperation. The FMCS has a large and broad range of clients external to the Government. Given the volume of public and private sector clients, there is a greater likelihood that conflicts of interest, impartiality, or other concerns may arise that employees may not be aware of and therefore it is necessary for the FMCS to screen for such conflicts. The approval requirement will help to ensure that potential ethics conflicts of interest, impartiality, or other concerns are resolved before certain employees begin outside employment or outside activities. Requiring prior approval ensures the neutrality and integrity of the FMCS' services.

### *Section 10300.101 General.*

Paragraph (a) explains that the regulation applies to all FMCS employees, other than special government employees, and supplements the OGE Standards.

Paragraph (b) notes that employees must comply with ethics guidance and procedures

issued by the FMCS and should contact an FMCS ethics official if an ethics question arises. This paragraph also includes cross-references to other OGE ethics related regulations.

*10300.102 Definitions.*

This section defines terms and phrases used throughout this supplemental regulation.

*10300.103 Prior approval for outside employment and outside activities.*

Paragraph (a) sets forth that an employee of the FMCS, other than a special government employee, is required to seek prior written approval before engaging in certain outside employment and outside activities.

Paragraph (b) sets out the standards and procedures for requesting approval to engage in certain outside employment and outside activities.

Paragraph (c) sets forth the requirement for submitting a revised request when there is a significant change in the nature, duties or scope of the outside employment or activity or to the employee's official duties or responsibilities.

Paragraph (d) provides that the DAEO may issue agency wide-policies, handbooks, or other written guidance governing the submission of requests for approval of outside employment and activities, which may exempt categories of employment and activities from the prior approval requirement of this section based on a determination that employment or activities within those categories would generally be approved and is not likely to involve conduct prohibited by statute or Federal regulation, including 5 CFR part 2635.

## **II. Matters of Regulatory Procedure**

*Administrative Procedure Act.*

Under 5 U.S.C. 553(a)(2), rules relating to agency management or personnel are exempt from the notice and comment rulemaking requirements of the Administrative Procedure Act (APA). In addition, under 5 U.S.C. 553(b)(3)(A), notice and comment rulemaking requirements do not apply to rules concerning matters of agency organization, procedure, or practice. Given that the rule concerns matters of agency management or personnel, and organization, procedure, or practice, the notice and comment requirements of the APA do not apply here. Nor is a public hearing required under 45 U.S.C. 160a. The public comment period on the proposed rule opened on July 18, 2023, the date of its publication in the **Federal Register**, and closed on August 17, 2023. During this period, the FMCS did not receive any comments on the proposed rule.

*Executive Order 12866*

This rule is not a significant rule for purposes of Executive Order 12866 and has not been reviewed by the Office of Management and Budget.

*Regulatory Flexibility Act.*

The FMCS has determined under the Regulatory Flexibility Act, 5 U.S.C. chapter 6, that this final rule would not have a significant economic impact on a substantial number of small entities because it would primarily affect FMCS employees.

*Paperwork Reduction Act.*

The Paperwork Reduction Act, 44 U.S.C. chapter 35, does not apply to this final rule because it does not contain any information collection requirements that would require the approval of the Office of Management and Budget.

*Congressional Review Act*

The FMCS has determined that this final rule does not meet the definition of a rule, as defined by the Congressional Review Act, 5 U.S.C. chapter 8, and thus does not require review by Congress.

**List of Subjects in 5 CFR Part 10300**

Conflicts of interests, Government employees.

For the reasons set forth in the preamble, the FMCS, with the concurrence of OGE, amends title 5 of the Code of Federal Regulations by adding a new chapter CIII, consisting of part 10300, to read as follows:

**Title 5—Administrative Personnel**

**Chapter CIII — Federal Mediation and Conciliation Service**

**PART 10300 — SUPPLEMENTAL STANDARDS OF ETHICAL CONDUCT FOR  
EMPLOYEES OF THE FEDERAL MEDIATION AND CONCILIATION  
SERVICE**

Sec.

10300.101      General.

10300.102      Definitions.

10300.103      Prior approval for outside employment and outside activities.

**Authority:** 5 U.S.C. 7301, 7353; 5 U.S.C. Ch. 131 (Ethics in Government Act of 1978); 29 U.S.C. 172; E.O. 12674, 54 FR 15159, 3 CFR, 1989 Comp., p. 215, as modified by E.O. 12731, 55 FR 42547, 3 CFR, 1990 Comp., p. 306; 5 CFR 2635.105, 5 CFR 2635.402(c), 5 CFR 2635.403(a), 5 CFR 2635.502, 5 CFR 2635.604, 5 CFR 2635.802, and 5 CFR 2635.803.

**§ 10300.101    General.**

(a) *Purpose.* In accordance with 5 CFR 2635.105, the regulations in this part apply to employees of the Federal Mediation and Conciliation Service (FMCS), other than special government employees as defined in 5 CFR 2635.102(l), and supplement the Standards of Ethical Conduct for Employees of the Executive Branch in 5 CFR part 2635 (Office of Government Ethics (OGE) Standards).

(b) *Cross-references.* In addition to the standards in 5 CFR part 2635 and this part, FMCS employees are required to comply with implementing guidance and procedures issued by the FMCS in accordance with 5 CFR 2635.105(c). FMCS employees are also subject to the regulations concerning executive branch financial disclosures contained in 5 CFR part 2634, the regulations concerning executive branch

financial interests contained in 5 CFR part 2640, regulations concerning post-employment restrictions contained in 5 CFR part 2641, and the regulations concerning executive branch employee responsibilities and conduct contained in 5 CFR part 735. Employees should contact an FMCS ethics official if they have questions about any provision of this regulation or other ethics-related matters.

**§ 10300.102 Definitions.**

For purposes of this part:

*Outside employment or activity* means any form of non-Federal employment or business relationship, compensated or uncompensated, involving the provision of personal services by the employee. It includes, but is not limited to:

(1) Personal services as an officer, director, employee, agent, attorney, consultant, contractor, general partner, trustee, teacher, professor, speaker, or writer.

(2) Active participation, including voluntary participation as defined in 5 CFR 2635.502(b)(1)(v), with a prohibited source.

(3) It does not include participation in the activities of a nonprofit charitable, religious, professional, social, fraternal, educational, recreational, public service, or civic organization, unless such activities are for compensation other than reimbursement of expenses; such activities involve the provision of professional services or advice; or the organization's activities are devoted substantially to matters relating to the employee's official duties as defined in 5 CFR 2635.807(a)(2)(i)(B) through (E).

**Note 1 to §10300.102.** There is a special approval requirement set out in both 18 U.S.C. 203(d) and 205(e) for certain representational activities otherwise covered by the conflict-of-interest restrictions on compensation and activities of employees in claims against and other matters affecting the Government. Thus, an employee who wishes to act as an agent or attorney for, or otherwise represent the employee's parents, spouse, child, or any person for whom, or any estate for which, the employee is serving as

guardian, executor, administrator, trustee, or other personal fiduciary in such matters, must obtain the approval required by law of the government official responsible for the employee's appointment, in addition to the regulatory approval required in this section.

**§ 10300.103 Prior approval for outside employment and outside activities.**

(a) *General requirement.* Before engaging in any outside employment or outside activity, as it is defined in § 10300.102, an employee of the FMCS, other than a special government employee, must obtain written approval.

(b) *Procedure for requesting approval.* The employee must first obtain written approval from the employee's immediate supervisor and then the Designated Agency Ethics Official (DAEO). If the employee does not obtain written approval from the employee's immediate supervisor, the employee may request review by the DAEO. Decisions by the DAEO are final and non-appealable.

(c) *Standard for approval.* Approval shall be granted only upon a determination that the outside employment or outside activity is not expected to involve conduct prohibited by statute or Federal regulation, including 5 CFR part 2635.

(d) *Revised requests.* Upon a significant change in the nature or scope of the outside employment or outside activity or in the employee's official position with the FMCS, the employee must, within 7 calendar days of the change, submit a revised request for approval. If there are no significant changes in the nature or scope of the outside employment or outside activity or in the employee's official position with the FMCS, the employee does not need to reapply after the FMCS' initial approval.

(e) *Implementation guidance.* The DAEO may issue instructions or manual issuances governing the submission of requests for approval of outside employment or outside activities. The instructions or manual issuances may exempt categories of employment and activities from the prior approval requirement of this section based on a determination that employment or activity within those categories of employment or

activities would generally be approved and is not likely to involve conduct prohibited by statute or Federal regulation, including 5 CFR part 2635. The DAEO may include in these instructions or issuances examples of outside employment and activities that are permissible or impermissible consistent with this part and 5 CFR part 2635.

Dated: November 28, 2023.

**Anna Davis,**  
*General Counsel & DAEO.*

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**Shelley K. Finlayson,**  
*Acting Director, U.S. Office of Government Ethics.*

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